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Mailed Electronically

August 4, 2009

Mr. Robert Doyle  
Director, Office of Regulations and Interpretations  
Employee Benefits Security Administration  
200 Constitution Avenue, NW  
Room N-5669  
Washington, D.C. 20210

Re: Transition Issues for 403(b) Plans

Dear Mr. Doyle:

We are writing on behalf of ACLI to express our gratitude for the guidance provided. ACLI appreciates the guidance Employee Benefits Security Administration ("EBSA") provided in Field Assistance Bulletin ("FAB") 2009-02. The clarifications in the FAB will be very helpful to not only those who provide services to 403(b) plans but also to the employers who sponsor 403(b) plans, many of whom are customers of ACLI members.

We also write to urge EBSA to provide audit relief and reporting guidance for purposes of establishing an opening balance for the 2009 Form 5500 annual report for 403(b) plans as well as clarify one of the criteria set forth in the FAB.

The American Council of Life Insurers (ACLI) is the principal trade association of life insurers, representing 353 members that account for 94 percent of the annuity considerations in the United States. Our members accordingly have a strong interest in issues affecting 403(b) plans.

### **Audit Relief**

While many 403(b) plans have been subject to ERISA for decades, other plans, also in existence for some time, may now be subject to ERISA for the first time. Unlike a qualified plan with an omnibus trust and single financial statement, it has been common for a 403(b) plan to have no single plan financial statement, but only those statements prepared by the insurer or custodian for each plan participant. For the new Form 5500, financial information is to be aggregated on a total plan basis. This is a new challenge for many plans. Even a small plan that is exempt from the audit requirement must now establish an opening balance for the entire plan for the 2009 plan year.

In order to establish an opening balance, EBSA should find it acceptable that employers as well as auditors rely on the 2008 plan or contract year reports prepared and certified by the insurer(s) and/or custodian(s) of the plan's contract(s) to establish the plan's 2009 opening balance. In addition to the relief provided in the FAB, EBSA should make clear that it will not reject a Form 5500 on the basis of a "qualified," "adverse" or disclaimed auditor opinion if the accountant expressly states such opinion is due to the fact that the opening balance for the first plan year subject to the ERISA reporting rules was based solely on certified statements from the insurer(s) and/or custodian(s) for the previous plan or contract year.

Non-profit employers need a reasonable cost effective way to comply with this new requirement. With charitable contributions down, many of these employers are struggling to make ends meet. Even if the economy were healthy, the cost borne by non-profit employers for ERISA compliance should be kept reasonable. Our members report that there has been an increased interest in plan termination on the part of many of these employers to avoid additional expenses. Limiting the scope of the audit requirement now will help minimize the cost of compliance.

### **Clarify Involvement With Legally Enforceable Rights**

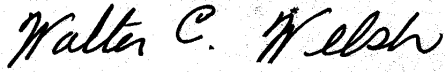
The FAB removes, for reporting and audit purposes, a key group of contracts. These contracts predate the effective date of the final 403(b) Treasury Regulations. In summary, the contracts identified by the FAB are those in which the sponsoring non-profit employer no longer has any active involvement, obligation, authority or control. Control over the benefits under these contracts rests with the employee or former employee. For example, while an insurer or custodian may confirm certain information with the employer (e.g., that the individual has severed employment) to determine whether, under the terms of the contract, the individual is entitled to a distribution, the insurer looks to the individual, not the employer, for direction as to whether to make payment. No other party has a right or benefit legally enforceable

under the contract. Please confirm that such contracts are eligible for relief under the FAB even if the insurer or issuer confirms certain information with a third party which may include the employer.

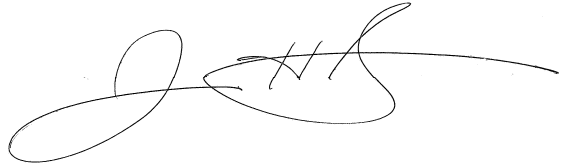
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On behalf of the ACLI member companies, thank you for consideration of these issues. We welcome the opportunity to engage in a productive dialogue with the Department on these important issues.

Sincerely yours,



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